588
583 Free union. This type of union rests on simple consent by the two parties without any bride price.

In principle a woman who has ceased to belong to a husband belongs to her original community, and she can make no decisions concerning her future without its consent. If she ignores this, the community can always intervene to force her to break off any engagement she may have made, and to this end it may use any means of absolute control.

This suffices to explain why a man who agrees to a union of this kind usually finds himself in the most serious difficulties. Not only can his wife and children be taken from him without [672] redress, but he can be sued for damages by the community to which the woman belongs.

It does sometimes happen, however, that certain women are released from the authority of their communities. These include women who are sole survivors of a community and, more commonly, those who have bought their freedom by dubious means. A free man who lives with such women achieves a union that to a great extent has the same effect as marriage. [206]

## The Family

592.
583 The household. The lawful household is based on marriage. In order to grasp its essence, account must be taken of the interplay of two elements which are perfectly distinct but always closely involved in all human affairs: interest and sentiment. In a lawful household the essential interest is the bride price whose nature must be defined in order to understand its overwhelming importance.

583 Bride price is what is paid in exchange for a wife. It is understood that the status of the woman thus handed over does not change; if she was free before the event, she is still free after the payment of the bride price.

• 586 The marriage tie is such that it can always be broken by one or the other party; the one breaking the contract simply loses the bride price in the sense that if the husband initiated the rupture he cannot expect anything already paid to be returned. If the initiative was taken by the wife (or her community), then she must return what has been paid. Whatever the cause of rupture, however, the children always belong to the husband.

429 A person who is away for a long or indefinite period [217] delegates the direction of the family community for as long as necessary to a friend or relative. This substitute, however, is expected to act only in accordance with the customary counsel and the family of the absent person.

[586] In case of divorce, the children always remain with the father. A divorced woman again comes under the guardianship of her own community.

768 When the mother dies, the father retains the administra-
429 tion of her property which belongs jointly to her children. If, however, one of her sons is married or of marriageable age and is competent, all such property is supposed to be handed over to him to administer in his capacity as fa of the uterine community.

When a father dies, his minor children are placed under the guardianship of the patriarch under whose authority the deceased was living. If he was independent, guardianship would be set up in accordance with his wishes which he would not have failed to make known.

In any event, if one of his sons is married or of marriageable age and sufficiently competent, he becomes fa of the familial community which gradually, as the younger sons grow up and establish families of their own, becomes a patriarchy such as we have described above.

[641] According to native law, deprivation of civil rights does not exist. In fact, however, persons who by reason of ill-health or senility are unable to comply with custom in carrying out their functions are supplanted by such persons as are designated by custom to replace them at the time of death.

596 Faya. The faya is the authority and power of the fa
614 over all his dependents. It has the same character, differing only in extent, whether it concerns a familial or a patriarchal community.

Familial faya. Within the family, the fa theoretically has complete authority over everything that constitutes this community. It makes little difference whether he acts on his own initiative or whether he allows himself to be swayed by the

## D. Position of Women

562 Women's society has remained much more impenetrable to European civilization. Women very rarely go to French schools, and unlike the men, who, during their military service and otherwise, are partly immersed in our system of civilization, they have few contacts with the Whites and appear to be even more attached to custom than their husbands. Very few speak French, and for all these [191] reasons their society has remained closed and very imperfectly known to the Whites.

562 Reasoning from what is known of their juridicial situation, we have deduced their inferior position. Perhaps a better knowledge of 858 their role and of their importance in the society will lead us to very different conclusions. From the legal point of view, a woman is always a minor; she belongs first to her own community, to which she owes obedience, then to her husband's community. When the marriage is legal, that is to say, when the husband has paid the matrimonial settlement, the children belong to the husband; if not, in the case of concubinage, the woman's family can claim the child, because it belongs to the family, as does everything of the mother's.

562 Her marriage is decided on by the fa; although in practice the woman is often consulted indirectly beforehand, and she has a 582 certain liberty in her choice. Even a slave can refuse to marry her 583 master, despite gifts and promises. But a woman is forbidden to marry someone she considers a relative, that is, someone who belongs to her paternal line and who bears the same name she does. Exogamy is the rule.

562 Yet, when a woman marries, she keeps her paternal name and her personal taboos; sometimes she adds her name to that of her son, 593 who normally bears the dyamu of his father. The woman remains very attached [75] to her family and goes to stay with them often. Among them she will find support in case of a difference of opinion [586] with her husband. In case of divorce through the fault of the husband, he loses all rights over the wife as well as the settlement he had paid.

595 In the system of polygamy, the first wife is mistress of the house; the other wives gather at her place for meals. She distributes [431] the husband's presents, but aside from these privileges, the rights of the wives are equal as are those of their children.